

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION**

MATTHEW GILMER,)	
)	
Plaintiff,)	
)	
vs.)	No. 3:10-cv-0969
)	JUDGE CAMPBELL
T.R. FRANKLIN, INC., et. al.,)	Magistrate Judge Brown
)	
Defendants.)	

**T.R. FRANKLIN, INC.'S MOTION IN LIMINE NO. 2
TO EXCLUDE EVIDENCE OF INCIDENTS
OF CRIMINAL ACTS OCCURRING AFTER OCTOBER 18, 2009**

Comes now Defendant, T.R. Franklin, Inc. ("Tin Roof"), by and through counsel, and pursuant to Federal Rule of Civil Procedure 401, and hereby moves the Court to exclude all incidents occurring at any Tin Roof location after October 18, 2009. It is well-established that incidents occurring after the incident in question provide no notice of a dangerous, foreseeable condition. Fed. R. Evid. 401; Flax v. DaimlerChrysler Corp., 272 S.W.3d 521, 543 (Tenn. 2008); Croskey v. BMW of North America, Inc., 532 F.3d 511 (6th Cir. 2008); Ellis Ex Rel Pentagrass v. Cleveland Mun. School, 455 F.3d 690 (6th Cir. 2006). Incidents that occur after the fact obviously provide no notice in advance to cure the problem. As a result, any incidents that occurred after the date of the incident in question are irrelevant to prove Plaintiff's claim that the incident was foreseeable. Fed. R. Evid. 401

WHEREFORE, premise considered, Tin Roof respectfully requests that the Court exclude all evidence of incidents occurring after October 18, 2009.

Respectfully submitted,

s/Steven J. Meisner

STEVEN J. MEISNER

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CERTIFICATE OF SERVICE

I hereby certify that a true and exact copy of the foregoing document has been served by the methods indicated upon the following on this 30th day of August, 2013:

<input type="checkbox"/> Hand <input type="checkbox"/> Regular Mail <input type="checkbox"/> Certified Mail <input type="checkbox"/> Fax <input type="checkbox"/> Fed X <input type="checkbox"/> Email <input checked="" type="checkbox"/> EFS	Philip N. Elbert, Esquire (BPR #9430) Lisa P. Binder, Esquire (BPR #24052) J. Isaac Sanders, Esquire Neal & Harwell, PLC 150 Fourth Avenue, North, Suite 2000 Nashville, TN 37219 Email: pelbert@nealharwell.com Email: lbinder@nealharwell.com Email: isanders@nealharwell.com Facsimile: (615) 726-0573 Phone: (615) 244-1713 Attorneys for Plaintiff
<input type="checkbox"/> Hand <input type="checkbox"/> Regular Mail <input type="checkbox"/> Certified Mail <input type="checkbox"/> Fax <input type="checkbox"/> Fed X <input type="checkbox"/> Email <input checked="" type="checkbox"/> EFS	Warren M. Smith, Esquire (BPR #10622) Smith & Tomkins 214 Second Avenue, North, Suite 100 Nashville, TN 37201 Email: wsmith@smithtomkins.com Facsimile: (615) 256-1283 Phone: (615) 256-1280 Attorney for SMW Carothers, LLC, NDG Carothers, LLC and NDG Properties, Inc.

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